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November 11, 2008

Via E-Filing

Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Petition for Declaratory Order, Finance Docket No. 35157

Dear Ms. Quinlan:

On November 6, 2008, the Surface Transportation Board ("Board") served a decision in the above-referenced proceeding. A portion of that decision stated as follows:

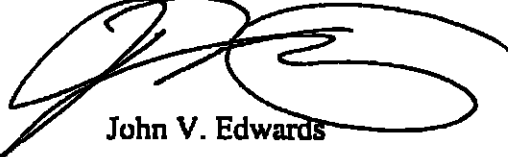
Because the Board does not interpret regulations outside of its jurisdiction, Alexandria may wish to consider seeking a ruling from [the Pipeline and Hazardous Materials Safety Administration ("PHMSA")] or the United States Department of Transportation stating whether 49 C.F.R. 174.304 prohibits a railroad from operating a facility for the transloading of ethanol. Copies of any such rulings should be provided to the Board so that, if appropriate, the Board may take them into consideration in future decisions on the merits in this proceeding.

Norfolk Southern Railway Company has already addressed this issue with PHMSA. PHMSA's response, Ref. No. 08-0232 dated November 7, 2008, is attached. It states that 49 C.F.R. 174.304 is not applicable to "the operation of a transloading facility on the property of a rail carrier where the lading is transloaded to other packaging (e.g., a cargo tank motor carrier) for further transportation to its final destination."

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In the November 6, 2008 decision, the Board directed Norfolk Southern to submit additional information by November 26, 2008. Norfolk Southern is preparing to respond, in a timely manner, to the Board's request.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a series of loops and a final flourish.

John V. Edwards



U.S. Department
of Transportation

Pipeline and Hazardous Materials
Safety Administration

1200 New Jersey Ave SE
Washington, DC 20590

NOV -7 2008

Mr. Lawrence Bierlein
1101 30th Street, NW, Suite 500
Washington, DC 20007

Ref. No. 08-0232

Dear Mr. Bierlein

This responds to your September 24, 2008 email requesting clarification of the applicability of § 174.304 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180). Specifically, you ask whether this provision rules out the operation of a transloading facility on the property of a rail carrier where lading is transloaded to other packaging (e.g., a cargo tank motor vehicle) for further transportation to its final destination.

The answer is no. It is the opinion of this Office that § 174.304 does not apply to the operation of a transloading facility as you describe. Section 174.304 prohibits the transportation of a rail tank car containing a Class 3 (flammable liquid) material unless it is originally consigned or subsequently consigned to a party meeting the conditions established in the section. This section is intended to apply to unloading operations at the facility that is the final destination for the material. The conditions established in § 174.304 are not applicable to operations of a transloading facility on the property of a rail carrier where the material is transferred to other packaging for further transportation to the final destination.

I hope this information is helpful. Please contact us if you require additional assistance.

Sincerely,

Susan Gorsky,
Acting Chief, Standards Development
Office of Hazardous Materials Standards